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United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) Case No. 07-CR-2881-JLS  
11 Plaintiff, ) DATE: November 16, 2007  
12 v. ) TIME: 9:30 a.m.  
13 EDUARDO RAMIREZ, ) GOVERNMENT'S RESPONSE TO  
14 ) DEFENDANT'S MOTION FOR  
15 ) DISCOVERY  
16 Defendant. ) TOGETHER WITH A STATEMENT  
 ) OF FACTS AND A MEMORANDUM  
 ) OF POINTS AND AUTHORITIES

18 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and  
19 through its counsel, Karen P. Hewitt, United States Attorney, and  
20 Peter J. Mazza, Assistant United States Attorney, and hereby files  
21 its response to Defendant Eduardo Ramirez's ("Defendant") motion  
22 for discovery and for leave to file additions motions. Said  
23 response is based upon the files and records of this case,  
24 together with the attached statement of facts and accompanying  
memorandum of points and authorities.

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**I****STATEMENT OF THE CASE****A. THE CHARGE**

On October 16, 2007, a grand jury sitting in the Southern District of California returned a two-count Indictment against Defendant, charging him with importation of cocaine into the United States from a place outside thereof, in violation of 21 U.S.C. §§ 952 and 960, and possession of cocaine with the intent to distribute, in violation of 21 U.S.C. § 841(a)(1). On October 17, 2007, Defendant was arraigned on the Indictment.

**B. STATUS OF DISCOVERY**

On October 31, 2007, the Government produced approximately 44 pages of discovery and one dvd. On November 9, 2007, the Government produced an additional two pages of discovery. The documents that have been produced constitute all discoverable material that the Government has to date, and includes, inter alia: (1) investigative reports; (2) Defendant's criminal history; (3) documents seized from Defendant's vehicle and his person; (4) photographs taken throughout the investigation; and (5) a video recording of Defendant's post-arrest interview.

**II****STATEMENT OF FACTS**

In his motion addressed herein, Defendant does not raise any factual issues. Therefore, the Government relies upon the reports provided to counsel in discovery to provide a factual basis for this response and opposition.

**III****POINTS AND AUTHORITIES****A. DISCOVERY**

In an attempt at simplification, this memorandum will address two specific areas of discovery: (1) items which the Government either has provided or will voluntarily provide; and (2) items demanded and discussed by Defendant which go beyond the strictures of Rule 16 and are not discoverable.

**1. Items Which The Government Has Already Provided Or Will Voluntarily Provide**

a. The Government will disclose to Defendant and make available for inspection, copying or photographing: any relevant written or recorded statements made by Defendant, or copies thereof, within the possession, custody, or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Government; and that portion of any written record containing the substance of any relevant oral statement made by Defendant whether before or after arrest in response to interrogation by any person then known to Defendant to be a Government agent. The Government will also to Defendant the substance of any other relevant oral statement made by Defendant whether before or after arrest in response to interrogation by any person then known by Defendant to be a Government agent if the Government intends to use that statement at trial.

b. The Government will permit Defendant to inspect and copy or photograph books, papers, documents,

1     photographs, tangible objects, buildings or places, or copies or  
 2     portions thereof, which are within the possession, custody or  
 3     control of the Government, and which are material to the  
 4     preparation of Defendant's defense or are intended for use by the  
 5     Government as evidence during its case-in-chief at trial, or were  
 6     obtained from or belong to Defendant;<sup>1/</sup>

7                 c.     The Government will permit Defendant to  
 8     inspect and copy or photograph any results or reports of physical  
 9     or mental examinations, and of scientific tests or experiments, or  
 10    copies thereof, which are in the possession, custody or control of  
 11    the Government, the existence of which is known, or by the  
 12    exercise of due diligence may become known, to the attorney for  
 13    the Government, and which are material to the preparation of his  
 14    defense or are intended for use by the Government as evidence  
 15    during its case-in-chief at trial;<sup>2/</sup>

16                 d.     The Government has furnished to Defendant a  
 17     copy of his prior criminal record, which is within its possession,  
 18     custody or control, the existence of which is known, or by the  
 19

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20  
 21                 1/    Rule 16(a)(1)(C) authorizes defendants to examine only  
 22     those Government documents material to the preparation of their  
 23     defense against the Government's case-in-chief. United States v.  
24    Armstrong, 116 S. Ct. 1480 (1996). Further, Rule 16 does not  
 25     require the disclosure by the prosecution of evidence it intends  
 26     to use in rebuttal. United States v. Givens, 767 F.2d 574 (9th  
 27     Cir. 1984), cert. denied, 474 U.S. 953 (1985).

28                 2/    The Government does not have "to disclose every single  
 29     piece of paper that is generated internally in conjunction with  
 30     scientific tests." United States v. Iglesias, 881 F.2d 1519  
 31     (9th Cir. 1989), cert. denied, 493 U.S. 1088 (1990).

1      exercise of due diligence may become known to the attorney for the  
 2      Government;

3                e.     The Government will disclose the terms of all  
 4      agreements (or any other inducements) with cooperating witnesses,  
 5      if any are entered into;

6                f.     The Government may disclose the statements of  
 7      witnesses to be called in its case-in-chief when its trial  
 8      memorandum is filed;<sup>3/</sup>

9                g.     The Government will disclose any record of  
 10     prior criminal convictions that could be used to impeach a  
 11     Government witness prior to any such witness' testimony;

12               h.     The Government will disclose in advance of  
 13     trial the general nature of other crimes, wrongs, or acts of

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16               3/   Production of these statements is governed by the Jencks  
 17     Act and need occur only after the witness testifies on direct  
 18     examination. United States v. Mills, 641 F.2d 785, 789-790 (9th  
 19     Cir.), cert. denied, 454 U.S. 902 (1981); United States v.  
Dreitzler, 577 F.2d 539, 553 (9th Cir. 1978), cert. denied, 440  
 20     U.S. 921 (1979); United States v. Walk, 533 F.2d 417, 418-419 (9th  
 21     Cir. 1975). For Jencks Act purposes, the Government has no  
 22     obligation to provide the defense with statements in the  
 23     possession of a state agency. United States v. Durham, 941 F.2d  
 24     858 (9th Cir. 1991). Prior trial testimony does not fall within  
 25     the scope of the Jencks Act. United States v. Isigro, 974 F.2d  
 26     1091, 1095 (9th Cir. 1992). Further, an agent's recorded radio  
 27     transmissions made during surveillance are not discoverable under  
 28     the Jencks Act. United States v. Bobadilla-Lopez, 954 F.2d 519  
 (9th Cir. 1992). The Government will provide the grand jury  
 transcripts of witnesses who have testified before the grand jury  
 if said testimony relates to the subject matter of their trial  
 testimony. Finally, the Government reserves the right to withhold  
 the statement of any particular witness it deems necessary until  
 after the witness testifies.

1      Defendant that it intends to introduce at trial pursuant to Rule  
 2      404(b) of the Federal Rules of Evidence;

3               i.      The Government acknowledges and recognizes its  
 4      continuing obligation to disclose exculpatory evidence and  
 5      discovery as required by Brady v. Maryland, 373 U.S. 83 (1963),  
 6      Giglio v. United States, 405 U.S. 150 (1972), Jencks and Rules 12  
 7      and 16 of the Federal Rules of Criminal Procedure, and will abide  
 8      by their dictates.<sup>4/</sup>

9               2.      Items Which Go Beyond The Strictures Of Rule 16

10               a.      The Requests By The Defendants For Specific  
Brady Information Or General Rule 16  
Discovery Should Be Denied

12      Defendant requests that the Government disclose all evidence  
 13      favorable to him, which tends to exculpate him, or which may be  
 14      relevant to any possible defense or contention they might assert.

15      It is well-settled that prior to trial, the Government must  
 16      provide a defendant in a criminal case with evidence that is both  
 17      favorable to the accused and material to guilt or punishment.  
 18      Pennsylvania v. Richie, 480 U.S. 39, 57 (1987); United States v.  
 19      Aquars, 427 U.S. 97 (1976); Brady v. Maryland, 373 U.S. 83, 87

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21               <sup>4/</sup>      Brady v. Maryland requires the Government to produce all  
 22      evidence that is material to either guilt or punishment. Brady v.  
Maryland, 373 U.S. 83 (1963). The Government's failure to provide  
 23      the information required by Brady is constitutional error only if  
 24      the information is material, that is, only if there is a  
 25      reasonable probability that the result of the proceeding would  
 26      have been different had the information been disclosed. Kyles v.  
Whitley, 115 S. Ct. 1555 (1995). However, neither Brady nor Rule  
 27      16 require the Government to disclose inculpatory information to  
 28      the defense. United States v. Arias-Villanueva, 998 F.2d 1491  
 (9th Cir. 1993).

1      (1963). As the Court explained in United States v. Agurs, 427  
 2      U.S. 97, 104 (1976), "a fair analysis of the holding in Brady  
 3      indicates that implicit in the requirement of materiality is a  
 4      concern that the suppressed evidence may have affected the outcome  
 5      of the trial." Thus, under Brady, "evidence is material only if  
 6      there is a reasonable probability that, had the evidence been  
 7      disclosed to the defense, the result of the proceeding would have  
 8      been different." United States v. Bagley, 473 U.S. 667, 682  
 9      (1985) (emphasis added). A "reasonable probability" is a  
 10     probability sufficient to undermine confidence in the outcome.  
 11     Pennsylvania v. Richie, 480 U.S. at 57 (quoting United States v.  
 12     Bagley, 473 U.S. at 682).

13     The Supreme Court has repeatedly held that the Brady rule is  
 14     not a rule of discovery; rather, it is a rule of fairness and is  
 15     based upon the requirement of due process. United States v.  
 16     Bagley, 473 U.S. at 675, n. 6; Weatherford v. Bursey, 429 U.S. at  
 17     559; United States v. Agurs, 427 U.S. at 108. The Supreme Court's  
 18     analysis of the limited scope and purpose of the Brady rule, as  
 19     set forth in the Bagley opinion, is worth quoting at length:

20     Its purpose is not to displace the adversary system as the  
 21     primary means by which truth is uncovered, but to ensure that  
 22     a miscarriage of justice does not occur. [footnote omitted].  
 23     Thus, the prosecutor is not required to deliver his entire  
 24     file to defense counsel,<sup>5/</sup> but only to disclose evidence

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25     <sup>5/</sup> See United States v. Agurs, 427 U.S. 97, 106 (1976);  
 26     Moore v. Illinois, 408 U.S. 786, 795 (1972). See also California  
 27     v. Trombetta, 467 U.S. 479, 488, n. 8 (1984). An interpretation  
 28     of Brady to create a broad, constitutionally required right of  
 discovery "would entirely alter the character and balance of our  
 (continued...)

favorable to the accused that, if suppressed, would deprive the defendant of a fair trial: "For unless the omission deprived the defendant of a fair trial, there was no constitutional violation requiring that the verdict be set aside; and absent a constitutional violation, there was no breach of the prosecutor's constitutional duty to disclose . . . but to reiterate a critical point, the prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial."

United States v. Bagley, 473 U.S. at 675 (quoting United States v. Agurs, 427 U.S. at 108) (emphasis added); see also Pennsylvania v. Richie, 480 U.S. at 59 ("A defendant's right to discover exculpatory evidence does not include the unsupervised authority to search through the Commonwealth's files."). Accordingly, the Government in this case will comply with the Brady mandate but rejects any affirmative duty to create or seek out evidence for the defense.

b. Defendants' Motion For Disclosure Of Witness Information Should Be Denied Except As Is Agreed To By The Government

Defendant seeks numerous records and information pertaining to potential Government witnesses. Regarding these individuals, the Government will provide Defendant with the following items prior to any such individual's trial testimony:

5/(...continued)

present system of criminal justice." Giles v. Maryland, 386 U.S. 66, 117 (1967) (Harlan, J., dissenting). Furthermore, a rule that the prosecutor commits error by any failure to disclose evidence favorable to the accused, no matter how insignificant, would impose an impossible burden on the prosecutor and would undermine the interest in the finality of judgements.

(1) The terms of all agreements (or any other inducements) it has made with cooperating witnesses, if they are entered into;

4 (2) All relevant exculpatory evidence  
5 concerning the credibility or bias of Government witnesses as  
6 mandated by law; and,

(3) Any record of prior criminal convictions  
that could be used to impeach a Government witness.

9           The Government opposes disclosure of rap sheet information of  
10          any Government witness prior to trial because of the prohibition  
11          contained in the Jencks Act.    See United States v. Taylor,  
12         542 F.2d 1023, 1026 (8th Cir. 1976), cert. denied, 429 U.S. 1074  
13         (1977).  Furthermore, any uncharged prior misconduct attributable  
14         to Government witnesses, all promises made to and consideration  
15         given to witnesses by the Government, and all threats of  
16         prosecution made to witnesses by the Government will be disclosed  
17         if required by the doctrine of Brady v. Maryland, 373 U.S. 83  
18         (1963) and Giglio v. United States, 450 U.S. 150 (1972).

c. The Rough Notes Of Our Agents

20           Although the Government has no objection to the preservation  
21 of agents' handwritten notes, we object to their production at  
22 this time. Further, the Government objects to any pretrial  
23 hearing concerning the production of rough notes. If during any  
24 evidentiary proceeding, certain rough notes become relevant, these  
25 notes will be made available.

1           Prior production of these notes is not necessary because they  
 2 are not "statements" within the meaning of the Jencks Act unless  
 3 they comprise both a substantially verbatim narrative of a  
 4 witness' assertions and they have been approved or adopted by the  
 5 witness. United States v. Spencer, 618 F.2d 605, 606-07 (9th Cir.  
 6 1980); see also United States v. Kaiser, 660 F.2d 724, 731-32  
 7 (9th Cir. 1981); United States v. Griffin, 659 F.2d 932, 936-38  
 8 (9th Cir. 1981).

9                                  d. Government Reports, Summaries, And Memoranda

10                 Rule 16, in pertinent part, provides:

11                 [T]his rule does not authorize the discovery or  
 12 inspection of reports, memoranda, or other internal  
 13 government documents made by the attorney for the  
 14 government or other government agent in connection with  
 15 the investigating or prosecuting of the case.

16                 Rule 16(a)(2); see also United States v. Sklaroff, 323 F. Supp.  
 17 296, 309 (S.D. Fla. 1971), and cases cited therein (emphasis  
 18 added); United States v. Garrison, 348 F. Supp. 1112, 1127-28  
 19 (E.D. La. 1972).

20                 The Government, as expressed previously, recognizes and  
 21 embraces its obligations pursuant to Brady v. Maryland, 373 U.S.  
 22 83 (1963), Giglio v. United States, 450 U.S. 150 (1972), Rule 16,  
 23 and the Jencks Act.<sup>6/</sup> We shall not, however, turn over internal  
 24 memoranda or reports which are properly regarded as work product

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25                 6/      Summaries of witness interviews conducted by Government  
 26 agents (DEA 6, FBI 302) are not Jencks Act statements. United  
 27 States v. Claiborne, 765 F.2d 784, 801 (9th Cir. 1985). The  
 28 production of witness interview is addressed in more detail below.

1 exempted from pretrial disclosure.<sup>77</sup> Such disclosure is supported  
2 neither by the Rules of Evidence nor case law and could compromise  
3 other areas of investigation still being pursued.

e. Defendants Are Not Entitled To Addresses  
Of Government Witnesses

Defendant requests the name and last known address of each prospective Government witness. While the Government may supply a tentative witness list with its trial memorandum, it objects to providing home addresses. See United States v. Sukumolachan, 610 F.2d 685, 688 (9th Cir. 1980), and United States v. Conder, 423 F.2d 904, 910 (9th Cir. 1970) (addressing defendant's request for the addresses of actual Government witnesses). A request for the home addresses of Government witnesses is tantamount to a request for a witness list and, in a non-capital case, there is no legal requirement that the Government supply defendant with a list of the witnesses it expects to call at trial. United States v. Thompson, 493 F.2d 305, 309 (9th Cir.), cert. denied, 419 U.S. 835 (1974); United States v. Glass, 421 F.2d 832, 833 (9th Cir. 1969).<sup>8/</sup>

20           7/ The Government recognizes that the possibility remains  
21 that some of these documents may become discoverable during the  
22 course of the trial if they are material to any issue that is  
raised.

<sup>8/</sup> Even in a capital case, the defendant is only entitled to receive a list of witnesses three days prior to commencement of trial. 18 U.S.C. § 3432. See also United States v. Richter, 488 F.2d 170 (9th Cir. 1973)(holding that defendant must make an affirmative showing as to need and reasonableness of such discovery). Likewise, agreements with witnesses need not be turned over prior to the testimony of the witness, United States (continued...)

1           The Ninth Circuit addressed this issue in United States v.  
 2 Jones, 612 F.2d 453 (9th Cir. 1979), cert. denied, 445 U.S. 966  
 3 (1980). In Jones, the court made it clear that, absent a showing  
 4 of necessity by the defense, there should be no pretrial  
 5 disclosure of the identity of Government witnesses. Id. at 455.  
 6 Several other Ninth Circuit cases have reached the same  
 7 conclusion. See, e.g., United States v. Armstrong, 621 F.2d 951,  
 8 1954 (9th Cir. 1980); United States v. Sukumolachan, 610 F.2d at  
 9 687; United States v. Paseur, 501 F.2d 966, 972 (9th Cir. 1974)  
 10 ("A defendant is not entitled as a matter of right to the name and  
 11 address of any witness.").

12           **f. Motion Pursuant To Rule 12(d)**

13           Defendant is hereby notified that the Government intends to  
 14 use in its case-in-chief at trial all evidence which Defendant is  
 15 entitled to discover under Rule 16, subject to any relevant  
 16 limitations prescribed in Rule 16.

17           **g. Defendant's Motion For Disclosure Of**  
 18 **Oral Statements Made To Non-Government**  
**Witnesses Should Be Denied**

19           Defendants are not entitled to discovery of oral statements  
 20 made by them to persons who were not - at the time such statements  
 21 were made - known by the defendants to be Government agents. The  
 22 plain language of Rule 16 supports this position. Rule 16

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23  
 24           <sup>8/</sup>(..continued)  
 25 v. Rinn, 586 F.2d 1113 (9th Cir. 1978), and there is no obligation  
 26 to turn over the criminal records of all witnesses. United States  
v. Taylor, 542 F.2d 1023, 1026 (8th Cir. 1976); United States v.  
Egger, 509 F.2d 745 (9th Cir.), cert. denied, 423 U.S. 842 (1975);  
United States v. Cosby, 500 F.2d 405 (9th Cir. 1974).

1      unambiguously states that defendants are entitled to "written and  
2      recorded" statements made by them. The rule limits discovery of  
3      oral statements to "that portion of any written record containing  
4      the substance of any relevant oral statement made by the defendant  
5      whether before or after arrest in response to interrogation by any  
6      person then known to the defendant to be a Government agent," and  
7      "the substance of any other relevant oral statement made by the  
8      defendant whether before or after arrest in response to  
9      interrogation by any person then known by the defendant to be a  
10     Government agent if the Government intends to use that statement  
11     at trial." The statutory language clearly means that oral  
12     statements are discoverable only in very limited circumstances,  
13     and then, only when made to a known Government agent.

14                          **h. Personnel Files Of Federal Agents**

15           Pursuant to United States v. Henthorn, 931 F.2d 29 (9th Cir.  
16           1991), and United States v. Cadet, 727 F.2d 1453 (9th Cir. 1984),  
17           the Government agrees to review the personnel files of its federal  
18           law enforcement witnesses and to "disclose information favorable  
19           to the defense that meets the appropriate standard of materiality  
20           . . . ." United States v. Cadet, 727 F.2d at 1467-68. Further,  
21           if counsel for the United States is uncertain about the  
22           materiality of the information within its possession, the material  
23           will be submitted to the court for in-camera inspection and  
24           review. In this case, the Government will ask the affected law  
25           enforcement agency to conduct the reviews and report their  
26           findings to the prosecutor assigned to the case. In United States

1      v. Jennings, 960 F.2d 1488 (9th Cir. 1992), the Ninth Circuit held  
2      that the Assistant U.S. Attorney assigned to the prosecution of  
3      the case has no duty to personally review the personnel files of  
4      federal law enforcement witnesses. In Jennings, the Ninth Circuit  
5      found that the present Department of Justice procedures providing  
6      for a review of federal law enforcement witness personnel files by  
7      the agency maintaining them is sufficient compliance with  
8      Henthorn. Jennings, 960 F.2d at 1492. In this case, the  
9      Government will comply with the procedures as set forth in  
10     Jennings.

11       Finally, the Government has no duty to examine the personnel  
12      files of state and local officers because they are not within the  
13      possession, custody or control of the Federal Government. United  
14     States v. Dominguez-Villa, 954 F.2d 562 (9th Cir. 1992).

15                  i. Reports Of Witness Interviews

16       Defendant has requested the production of all reports  
17      generated in connection with witness interviews. To date, the  
18      Government does not have any reports regarding witness interviews  
19      or otherwise that have not been turned over to Defendant.  
20      However, to the extent that such additional reports regarding  
21      witness interviews are generated, the information sought by  
22      Defendant is not subject to discovery under the Jencks Act, 18  
23      U.S.C., Section 3500. In Jencks v. United States, 353 U.S. 657  
24      (1957), the Supreme Court held that a criminal defendant had a due  
25      process right to inspect, for impeachment purposes, statements  
26      which had been made to government agents by government witnesses.

1     Such statements were to be turned over to the defense at the time  
 2     of cross-examination if their contents related to the subject  
 3     matter of the witness' direct testimony, and if a demand had been  
 4     made for specific statements of the witness. Id. at 1013-15. The  
 5     Jencks Act, 18 U.S.C., Section 3500, was enacted in response to  
 6     the Jencks decision. As the Supreme Court stated in an early  
 7     interpretation of the Jencks Act:

8                 Not only was it strongly feared that disclosure of memoranda  
 9     containing the investigative agent's interpretations and  
 10    impressions might reveal the inner workings of the  
 11    investigative process and thereby injure the national  
 12    interest, but it was felt to be grossly unfair to allow the  
 13    defense to use statements to impeach a witness which could  
 14    not fairly be said to be the witness' own rather than the  
 15    product of the investigator's selections, interpretations,  
 16    and interpolations. The committee reports of the Houses and  
 17    the floor debates clearly manifest the intention to avoid  
 18    these dangers by restricting the production to those  
 19    statements defined in the bill.  
 20

21                 Palermo v. United States, 360 U.S. 343, 350 (1959). Having  
 22    examined the legislative history and intent behind enactment of  
 23    the Jencks Act, the Court concluded, "[t]he purpose of the Act,  
 24    its fair reading and its overwhelming legislative history compel  
 25    us to hold that statements of a government witness made to an  
 26    agent of the government which cannot be produced under the terms  
 27    of 18 U.S.C. § 3500, cannot be produced at all."

28                 Reports generated in connection with a witness's interview  
 29    session are only subject to production under the Jencks Act if the  
 30    witness signed the report, or otherwise adopted or approved the  
 31    contents of the report. See 18 U.S.C. § 3500(e)(1); see also  
 32    United States v. Miller, 771 F.2d 1219, 1231-31 (9th Cir. 1985)  
 33    ("The Jencks Act is, by its terms, applicable only to writings  
 34    of the witness, and does not apply to notes, reports, or other  
 35    memoranda prepared by the witness during the course of his  
 36    interview with the agent." (citations omitted)).  
 37

which are signed or adopted by a witness and to accounts which are substantially verbatim recitals of a witnesses' oral statements."); United States v. Friedman, 593 F.2d 109, 120 (9th Cir. 1979) (an interview report that contains a summary of a witness' statements is not subject to discovery under the Jencks Act); United States v. Augenblick, 393 U.S. 248, 354-44 (1969) (rough notes of witness interview not a "statement" covering entire interview). Indeed, "both the history of the [Jencks Act] and the decisions interpreting it have stressed that for production to be required, the material should not only reflect the witness' own words, but should also be in the nature of a complete recital that eliminates the possibility of portions being selected out of context." United States v. Bobadilla-Lopez, 954 F.2d 519, 522 (9th Cir. 1992). As recognized by the Supreme Court, "the [Jencks Act] was designed to eliminate the danger of distortion and misrepresentation inherent in a report which merely selects portions, albeit accurately, from a lengthy oral recital." Id. The defendants should not be allowed access to reports which they cannot properly use to cross-examine the Government's witnesses.

j. Expert Witnesses

22 The Government will disclose to Defendant the name,  
23 qualifications, and a written summary of testimony of any expert  
24 the Government intends to use during its case-in-chief at trial  
25 pursuant to Fed. R. Evid. 702, 703, or 705 three weeks prior to  
26 the scheduled trial date.

**k. Other Discovery Requests**

To the extent that the above does not answer all of Defendant's discovery requests, the Government opposes the motions on the grounds that there is no authority requiring us to provide such material.

**B. LEAVE TO FILE ADDITIONAL MOTIONS**

The Government does not oppose Defendant's request for leave to file further motions.

IV

## **CONCLUSION**

For the foregoing reasons, the Government requests that Defendant's motions be denied where indicated.

DATED: November 9, 2007.

Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

s/ Peter J. Mazza  
PETER J. MAZZA  
Assistant U.S. Attorney

**9** IT IS HEREBY CERTIFIED THAT:

10 I, PETER J. MAZZA, am a citizen of the United States and am  
11 at least eighteen years of age. My business address is 880 Front  
Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of a Response to Defendant's Motion for Discovery on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

15 | 1. Maxine Dobro, Esq.

**16** I declare under penalty of perjury that the foregoing is true and correct.

17 || Executed on November 9, 2007

s/ Peter J. Mazza  
PETER J. MAZZA